

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 0,1,5,73, and 74 of the)	MB Docket No. 18-121
Commission’s Rules Regarding Posting of Station)	
Licenses and Related Information)	
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105

COMMENTS OF HC2 BROADCASTING HOLDINGS INC.

I. INTRODUCTION

HC2 Broadcasting Holdings Inc. (“HC2”) files this comment in support of the Commission’s notice of proposed rulemaking (“*Notice*”), which seeks to eliminate posting requirements and outdated record keeping requirements by amending provisions within Parts 0, 1, 5, 73, and 74 of the rules.¹ Streamlining license posting and record maintenance requirements not only promises to bring regulations in line with technological development and industry practice that have occurred over the last thirty years, but also reduce operating expenses and free business capital in ways that allow for increased spending on improved transmission facilities, programming enhancements and expanded community engagement.

Broadcast stations do not operate as they did when the rules were first implemented in the 1930s. Online databases have made posting paper copies of station records far less important a mechanism for ensuring ready access to information about the operating parameters of station licensees than it once was. In addition, broadcast licensees have implemented safety and security measures that restrict public access to vulnerable or potentially hazardous broadcast locations more rigorously than may have previously been the case. Restricted-access locations help protect the public and station personnel from potential harm, but make posting licenses in the room occupied by an operator or at other “conspicuous” locations more

¹ *Amendment of Parts 0,1,5,73, and 74 of the Commission’s Rules Regarding Posting of Station Licenses and Related Information*, Notice of Proposed Rulemaking, MB Docket Nos. 18-121, 17-105 (May 10, 2018) (“NPRM”).

difficult – and less practical – than it may have once been.² The Commission’s rules should reflect changed conditions in the industry and the world. Failure to modify the rules affecting broadcast television in ways that account for changing technology and consumer behavior place unnecessary burdens on broadcast stations by requiring them to maintain physical copies of station records that are now readily available online in Commission databases. Chairman Pai recognized that maintaining the current bevy of posting and record keeping requirements serves no public interest, stating that “you can’t see posted licenses even if you want to . . . [because] the transmitter sites at which stations are required to post them aren’t physically accessible to or viewable by the public.”³ The time has long since passed for the Commission to retire duplicative and unnecessary rules on the physical posting of various broadcast station authorizations.

II. BACKGROUND

HC2 welcomes the Commission’s commitment to initiating at least one rulemaking each month to modify or eliminate “outdated, unnecessary or unduly burdensome” regulations applicable to the broadcast industry,⁴ and looks forward to working with the Commission to address a wide variety of regulatory issues to achieve this goal. The Commission has an obligation under the Communications Act of 1934 to ensure that these regulations still serve the public interest.⁵ The FCC also has an affirmative obligation under the Paperwork Reduction Act to reduce paperwork and administrative burdens on broadcast licensees.⁶ As the *Notice* acknowledges, the posting requirements and record keeping requirements found within Parts 0, 1, 5, 73, and 74 of the Commission’s rules likely fall in this “outdated, unnecessary or unduly burdensome” category.

² See U.S. DEPT. OF COMMERCE, RADIO DIVISION, RADIO SERVICE BULL. NO. 158, at 23, GENERAL ORDERS OF THE FEDERAL RADIO COMMISSION (May 31, 1930) (stating “that every station license shall be posted by the licensee in a conspicuous place in the room in which the transmitter is located and the license of every station operator shall be posted in a conspicuous place in the room occupied by said station operator while on duty”).

³ NPRM, Statement of Chairman Ajit Pai (stating that he is “skeptical that [the FCC’s] license posting requirements currently serve any useful purpose”).

⁴ *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, MB Docket No. 17-105, FCC 17-58 (May 18, 2017).

⁵ 47 U.S.C. § 161(b).

⁶ 44 U.S.C. Part 35.

The current rules that place posting and record-keeping responsibilities on broadcast stations date back to the 1930s.⁷ The Commission recognizes that current license posting rules are “redundant and obsolete” because much of a station’s license information is now recorded in electronic databases.⁸ Adopting the proposed changes, such as eliminating the posting requirements under sections 73.1230 and 74.765, will alleviate burdens placed on businesses to post physical copies of licenses and maintain record information.⁹ More specifically, this will reduce time and costs for all broadcasters, including small business entities which encompasses a majority of commercial licensed television stations. Without a clear justification for continued adherence to the rules, industry modernization, including the trend towards moving information online, supports streamlining existing rules.

III. THE PROPOSALS TO MODIFY AND ELIMINATE OUTDATED RULES SHOULD BE ADOPTED.

The Commission’s proposal to eliminate section 73.1230, which requires all broadcast stations to post station licenses and other authorizations “conspicuously” and at the “principal control point of the transmitter” is an excellent first step.¹⁰ Posting licenses and other authorizations on a physical site is not the most practical or useful method of accessing pertinent station operating parameters due to limited public access and remote station operations. In his Statement accompanying the *Notice*, Commissioner O’Rielly acknowledged the public often has limited or completely restricted access to posting locations.¹¹ Moreover, stations infrequently operate from the principal control point of the transmitter, and even if they did, those areas are still restricted to the public. In any case, the same information is available from any location using fixed or wireless internet connections. Therefore, whatever purpose the physical posting of a license may have once served is no longer the least burdensome, or even the most efficient, option.

⁷ NPRM, Statement of Chairman Ajit Pai.

⁸ NPRM at ¶ 1.

⁹ 47 C.F.R. §§ 73.1230, 74.765.

¹⁰ 47 C.F.R. § 73.1230.

¹¹ NPRM, Statement of Commissioner Michael O’Rielly. For example, UHF translator booster signals have limited access and visibility which suggests section 74.733(i) is no longer necessary. 47 C.F.R. § 47.733(i).

The same logic extends to eliminating section 74.664, which requires television broadcast auxiliary stations to be located “in the room where the transmitter is located.”¹² Broadcast auxiliary stations are radio frequency systems used by broadcast stations and broadcast or cable network entities to relay broadcast television signals from the studio to the transmitter, or between two points, such as a main studio and an auxiliary studio.¹³ Access to the transmitters for these auxiliary stations, like those for primary stations, is typically restricted. Therefore, it is not clear what public interest is served by continuing to enforce this rule.

Similarly, section 74.765 requires LPTV, TV translator, and TV booster stations to post licenses and authorizations at the antenna site even though these sites are no more likely to be publicly accessible than the location of transmitters.¹⁴ Antennas for LPTV, TV translator and TV booster stations are generally located in restricted areas surrounded by fences. Moreover, when licenses are posted outdoors, they are subjected to weather that can damage or fade the text of paper copies of the licenses.

Whether the posting location is at the transmitter site, the room where the transmitter is located, the antenna site, or the principal point of control, each location is generally inaccessible to the public and in a secure location. Even if the license providing contact information for the local representative of licensee and record custodian is prominently displayed, that posting is useless if no one can view it.¹⁵ The posting rules no longer serve the public interest because information is electronically available to the Commission and public. FCC databases are accessible via the internet to anyone with a smartphone, tablet or computer. For example, information required under section 74.765 is already available through the Commission’s CDBS, LMS and ULS electronic databases.¹⁶

If the concern is that contact information needs to be available in emergency situations, relying on posted information at the transmitter or antenna site fails to address this need. These locations are seldom

¹² 47 C.F.R. § 74.664; *see also*, 47 C.F.R. § 74.832(j) (stating that low power auxiliary stations must post their license at the transmitter or the post control point of the station).

¹³ NPRM at ¶ 2 n.5.

¹⁴ 47 C.F.R. § 74.765.

¹⁵ NPRM at ¶ 8.

¹⁶ *Id.* at ¶ 5.

easily accessible, and the information posted is often barely visible because the posting is well above eye level, or obscured by other equipment, or damaged and faded as a result of weather. Perhaps more importantly, posted contact information at the transmitter, even if perfectly visible and accessible, is not helpful when the emergency is at the antenna site. For example, a firefighter battling a fire at an antenna site would not have any use for contact information posted at a transmitter quite some distance away. The same problem would be true if the emergency is at the transmitter site, but the required physical posting is at the antenna location, as is required for LPTV, TV translator, and TV booster stations under section 74.765.¹⁷ Accessing information in the Commission's online databases, which are accessible anywhere there is internet connectivity, offers a reliable, physically distinct means of readily accessing data and helps to ensure the data provided represents the most current and up-to-date station information available.

While contact information for the custodian of station records is not currently captured in Commission databases,¹⁸ contact people listed online for that station, which often include legal counsel, can easily direct the inquiry to the individual who maintains licensing records for the station. In any event, maintaining current posting requirements just to identify the custodian of station records offers no efficiencies to the Commission or the public when the license information must be posted inside restricted-access areas that are generally inaccessible to the public.¹⁹

Finally, section 1.62(a)(2), which puts unnecessary posting and record maintenance burdens in the context of license renewals, and section 5.203(b), which puts unnecessary posting burdens in the context of experimental authorizations, should both be modified or eliminated.²⁰ Once again, displaying licensing documents and other authorizations for broadcast stations is outdated because these locations are often inaccessible and redundant with information found online.

¹⁷ 47 C.F.R. § 74.765.

¹⁸ See NPRM at ¶10.

¹⁹ Should the Commission decide that making the custodian of records' contact information readily available online is in the public interest, the Commission could compile this contact information by modifying an existing online application to collect the desired information rather than continuing to require physical posting, as is required under Section 74.781(c) for LPTV, TV translators, and TV booster stations. For example, the Commission could change Form 303-S to include a field for contact information if the Commission is not satisfied the information currently posted online is explicit enough. See NPRM at ¶10. See also, 47 C.F.R. § 74.781(c)

²⁰ *Id.* at ¶ 2; see also, C.F.R. §§ 5.203(b), 1.62(a)(2).

While the reasons for adhering to the outdated rules are unclear, eliminating these rules has concrete benefits. The time and money broadcasters spend posting redundant information that can be found equally, if not more accessibly, online can be spent improving programming and viewer experiences. The proposed modifications will also benefit a large number of small business entities. As of February 2017, 1,264 of a total 1,384 licensed commercial television stations qualified as small business entities.²¹ In addition, 1,968 LPTV, 417 Class A, and 3,776 TV translator stations qualify as small business entities.²² Eliminating burdensome requirements for small business entities thus meets the Commission's objective to "match the realities of today's marketplace."²³ More broadly, the removal of these posting requirements is consistent with the FCC's obligation to reduce administrative burdens under the Paperwork Reduction Act.

IV. THE COMMISSION SHOULD CONSIDER ELIMINATING OR MODIFYING ADDITIONAL POSTING AND RECORD KEEPING REQUIREMENTS.

Eliminating or modifying additional rules not found in the *Notice* regarding station license posting and maintenance requirements would build on the foundation of consumer benefit the FCC has proposed without compromising the access to information that the public and the FCC needs to hold licensees accountable for performance. For example, removing and modifying the portions of section 73.1226 requiring station logs and records to be available or sent to the Commission by registered mail would save licensees money and, depending on how the rules were revised, allow for more efficient and timely access to the data by the Commission and the public.²⁴ Under the current rule, station licensees

²¹ NPRM Appendix B at ¶ 7. HC2 also supports and acknowledges the Commission's efforts to eliminate burdensome requirements for the 9,898 AM and FM radio stations and a majority of low power FM, FM translator, and FM booster stations that qualify as small business entities. *Id.* at ¶ 11–12; *News Release*, "Broadcast Station Totals as of June 30, 2017" (rel. July 11, 2017) (http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-304594A1315231A1.pdf). *See, e.g.*, 47 C.F.R. §§ 74.1265, 74.564.

²² *Id.* at ¶ 9. *See* FCC News Release, *Broadcast Station Totals as of June 30, 2017* (rel. July 11, 2017).

²³ Statement of Chairman Ajit Pai, *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105.

²⁴ Section 73.1226 can be struck from the Commission rules entirely because station logs are neither accessed nor used by the public or the Commission. *See* Comments of America's Public Television Stations, Corporation for Public Broadcasting, National Public Radio, Inc., and Public Broadcasting Service, FCC Docket No. MB 17-105 at 9 (filed July 5, 2017) ("America's Public Television Comments") (stating in the ongoing modernization of media regulations docket, MB Docket No. 17-105, that the requirements of section 73.1226 are "unnecessary and burdensome"). At a minimum, section § 73.1226(a) should be modified to allow broadcasters to make station logs

must not only send station logs to the FCC by registered mail, but also retain the return receipt and keep it as part of the station records until the requested records or logs are returned.²⁵ Posting the information online would achieve the same purpose, allow immediate access to the information and eliminate the risk of misplaced mail or lost return receipts. The current requirements place unnecessary burdens on stations because all such logs and records can be provided more quickly and cost effectively online.²⁶

Allowing broadcast stations to file the local public notice of filing online rather than in print as currently required under section 73.3580(c)(1) would also ease the burden on licensees while improving public access to information.²⁷ Section 73.3580(c)(1) requires all broadcast stations filing a broadcast application to provide notice of the filing in a public newspaper within thirty days of tendering the application.²⁸ Reaching communities that stations serve represents an important component of every station's public interest obligations. But times have changed since this rule was first adopted in 1979. The advent of the internet, the widespread availability of broadband access, the diminution in circulation of print media, and the transition of virtually all media online have created alternative platforms that can reach consumers faster, more reliably and more cost effectively than traditional print media. Allowing broadcasters the option of using alternative platforms, such as their station websites or newspaper

and records publicly available online as an alternative to keeping physical copies that need to be mailed to requesting parties.

²⁵ 47 C.F.R. § 73.1226(a). *See* 47 C.F.R. § 73.1226(a).

²⁶ America's Public Television Comments at 9.

²⁷ Section 73.3580(c) can be revised by adding the words "or on the station's website or local news website" after the word "newspaper." This change would make section 73.3580(c)(1) inapplicable to those broadcasters who choose to give notice via the station website rather than a newspaper. *See* 47 C.F.R. § 73.3580(c); *see also*, *Amendment of Section 73.624(g) of the Commission's Rules*, Notice of Proposed Rulemaking, MB Docket Nos. 17-264, 17-105, 05-6 (Oct. 24, 2017); *Amendment of Section 73.624(g) of the Commission's Rules*, Report and Order, MB Docket Nos. 17-264, 17-105, FN1 (Apr. 13, 2018) (stating that the Commission will address section 73.3580 at a later date).

²⁸ Section 73.3580(c)(1) requires that the notice should be printed in a "general circulation" daily newspaper at least twice a week for two consecutive weeks within a three-week period "in the community in which the station is located, or proposed to be located." If there is no daily or weekly newspaper, the rules allow for publishing in a weekly newspaper once a week for three consecutive weeks in a four week period or a daily newspaper from the nearest general circulation paper at least twice a week for two consecutive weeks within a three-week period. 47 C.F.R. § 73.3580(c)(1).

websites, to reach people in the community may better serve consumers who already get much of their news online.²⁹

Eliminating section 73.3526(c)(2) of the public file requirements would also reduce paperwork that modern technology has rendered almost entirely obsolete.³⁰ Section 73.3526(c)(2) requires the licensee maintaining its “main studio and public file outside of the community of license” to make photocopies of documents in the file, mail requested copies of “The Public and Broadcasting” on request, and identify documents requested to be sent by mail.³¹ If this information is available online, station licensees need not mail the information to the requesting party, who can have immediate access to the material over the web. Eliminating this rule is in line with the Commission’s goals to remove outdated requirements that require the physical production of information available online.

V. CONCLUSION

Times have changed, and the Commission’s rules should change too. Physically posting licenses, record files, and other authorization information on transmitter sites and antennas is no longer the most reliable or efficient means of making information available to the public in the Internet age. Repealing these rules and the other outdated requirements identified here will enhance public access to information while removing unnecessary burdens on broadcast stations.

Respectfully submitted,

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²⁹ See generally Pew Research Center “Digital News Fact Sheet” (June 6, 2018) (<http://www.journalism.org/fact-sheet/digital-news/>).

³⁰ Section 73.3526(c)(2) can be struck from the Commission rules in its entirety. See 47 C.F.R. § 73.3526(c)(2).

³¹ 47 C.F.R. 73.3526(c)(2)(i) –(iii).